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10/587,865

07/28/2006

Iwao Yamazaki

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09/19/2008

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EXAMINER

PORTER, JR, GARY A

ART UNIT

PAPER NUMBER

3766

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|---------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/587,865 | Applicant(s) YAMAZAKI, IWA0 | |
| | Examiner GARY A. PORTER, JR | Art Unit 3766 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 15-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/28/2006 and 12/13/2006</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-14, drawn to an electrode for applying stimulation to the body.

Group II, claim(s) 15-20, drawn to a device for applying stimulation to the body.

2. The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The special technical feature of Group I, an electrode comprising a power source, a controlling means and a treatment current supplying means is not shared in Group II. The special technical feature of Group II, a device comprising an electrode and a controller, is not shared by Group I. Therefore, the respective groups lack the same or corresponding special technical features and do not relate to a single general inventive concept.

3. During a telephone conversation with Richard Burgujian on September 9, 2008, a provisional election was made without traverse to prosecute the invention of Group I, claims 1-14. Affirmation of this election must be made by applicant in replying to this Office action. Claims 15-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 1 recites the limitation "the electric power supply" in line 8. There is insufficient antecedent basis for this limitation in the claim.

7. Claims 7 and 8 recite the limitation "treatment controlling information" in lines 8 and 16 respectively. There is insufficient antecedent basis for this limitation in the claims.

8. Claims 7 and 8 recite "and/or" in lines 10, 13 and 17. It is unclear as to whether all the limitations linked by "and/or" are required for the present invention or if just one of the limitations listed is all that is required. It is suggested that either "and" or "or" be selected, not both.

9. Claims 2-6 and 9-14 are also rejected since they depend from a rejected base claim.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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11. Claims 1-8 and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamazaki et al. (US Pub. 2003/0153958) in view of Ya Man LTD (JP 2000-060977).

12. Regarding claim 1, Yamazaki discloses an electrode for treatment (Abstract), comprising an electric power source, which is an inherent feature since the system can be turned on and off (Section [0058]); a conducting pad 5 for attaching a human body (Abstract); a treatment current supplying means for supplying a pulsed current to a body part to which said conducting pad is attached on the electric power supply from said electric power source (Section [0012]); and a portable controlling means 2 for controlling said treatment current supplying means on the basis of a control signal received by the conducting pad 5 (Section [0067]). Yamazaki does not disclose a receiving means for receiving an external control signal at radio transmission. However, Ya Man teaches an electrode treatment device that contains a portable control unit 1 that transmits control signals via a transmission antenna to a receiving antenna on the treatment apparatus in order to control the stimulation given by an electrode belt (Abstract). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device in the Yamazaki reference to include electrode treatment device that contains a portable control unit 1 that transmits control signals via a transmission antenna to a receiving antenna on the treatment apparatus in order to control the stimulation given by an electrode belt, as taught and suggested by Ya Man, for the purpose of making the system more flexible by eliminating bulky wires.

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13. In regards to claim 2, Yamazaki teaches that the current supplying means is configured so as to stop the supply of said pulsed current at a given period, i.e. defines the period of the treatment (Section [0058]).

14. With regards to claim 3, Yamazaki teaches that the conducting pad is comprised of a plurality of conducting pads, i.e. H1, H2, etc. (Sections [0032, 0054]).

15. Regarding claim 4, Yamazaki teaches a conducting pad connector (cable 59 and button recess 7) for electrically and mechanically connecting the plurality of pads, wherein the length of said conducting pad connector is changeable, i.e. any length of cable can be used in the connector (Section [0055]; Fig. 2).

16. In regards to claim 5, Yamazaki teaches that the conducting pad connector (cable 59 and button recess 7) is flexible, as seen by the bend in cable 59 (Fig. 2) and analogous cable 3 (Section [0055]; Fig. 1; Fig. 7).

17. With regards to claim 6, Yamazaki teaches an impedance measuring means 20 for measuring the impedance of said body part to which said conducting pad is attached by emitting a measuring current in said body part (Section [0064]).

18. Regarding claim 7, Yamazaki discloses that the impedance measurement obtained from the impedance measurement unit 20 is used to evaluate the body fat of a user and then prescribe a specific treatment based on the body fat reading (Section [0062-0068]; Fig. 4). Yamazaki does not disclose a transmitting means for transmitting the impedance measurement to a receiving means for controlling stimulation applied to the body based on an impedance measurement. However, Ya Man teaches an electrode treatment device that contains a portable control unit 1 that transmits control

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signals via a transmission antenna to a receiving antenna on the treatment apparatus in order to control the stimulation given by an electrode belt (Abstract). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device in the Yamazaki reference to include electrode treatment device that contains a portable control unit 1 that transmits control signals via a transmission antenna to a receiving antenna on the treatment apparatus in order to control the stimulation given by an electrode belt, as taught and suggested by Ya Man, for the purpose of making the system more flexible by eliminating bulky wires.

19. In regards to claims 8 and 9, Yamazaki teaches that the frequency and therefore pulse width of stimulation is varied based on the treatment regimen chosen, which is determined by the body fat measurement derived from the impedance measurement (Section [0062-0073]).

20. With regards to claim 10, Yamazaki teaches a pad adhering means, i.e. a face fastener 54, that fastens the conducting pad 5 to the body (Section [0091]).

21. Regarding claim 11, Yamazaki teaches that the conducting pad is made of an adhesive sheet with electric conduction (Section [0092]).

22. In regards to claim 12, Yamazaki teaches that the conducting pad 5 is comprised of a plurality of conducting pads, H1-H4 commensurate with different kinds of shapes of said body part (Fig. 1).

23. With regards to claim 13, Yamazaki teaches a clothing, i.e. a belt, with said plurality of conducting pads which are fixed so as to be contacted to said body part at treatment (Fig. 1).

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24. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamazaki et al. (US Pub. 2003/0153958) in view of Ya Man LTD (JP 2000-060977), further in view of Granek et al. (US Patent 4,729,377). Yamazaki and Ya Man disclose all of the claimed invention except for a heart beat detecting means for detecting the number of heart beats through said conducting pad to be contacted to said body part. However, Granek teaches a garment apparatus for delivering and receiving electrical impulses that uses electrodes 24 can detect ECG signals. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device in the Yamazaki and Ya Man combination to include a heart beat detecting means for detecting the number of heart beats through said conducting pad to be contacted to said body part, i.e. an ECG, as taught and suggested by Granek for the purpose of monitoring the function of the heart during therapy in order to ensure patient safety.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GARY A. PORTER, JR whose telephone number is (571)270-5419. The examiner can normally be reached on Monday - Thursday, 8AM - 5PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Layno can be reached on (571)272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. A. P./
Examiner, Art Unit 3766

/Carl H. Layno/
Supervisory Patent Examiner, Art
Unit 3766